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December 13, 2004

By Facsimile to 202/219-3923

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20004

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2004 DEC 20 11:13

Re: MUR-5586 - Response to Complaint on behalf of Service
Employees International Union

Dear Sir or Madam:

The Service Employees International Union, AFL-CIO ("SEIU") responds to the complaint filed by the Republican Party of Florida in this matter as follows:

1. SEIU is an international labor organization. SEIU was served with a copy of the complaint by letter dated November 3, 2004 addressed to its International President at its headquarters in Washington, D.C. Since SEIU is not named in the complaint, including the list of Respondents in Attachment B, it should not have been served with a copy of the complaint and no action may be taken against it in response to the complaint. *See*, 2 U.S.C. §437g(a)(1) (Commission shall notify "any person alleged in the complaint to have committed such a violation"); 11 C.F.R. § 111.4(d)(1) (complaint should "clearly identify as a respondent each person or entity who is alleged to have committed a violation"); 11 C.F.R. § 111.5(a) (Commission shall notify "each respondent").

2. The Commission's letter to SEIU states that the complaint indicates that "Florida Service Employees International Unions (sic)" may have violated the Act. The opening paragraph of the complaint also lists "Florida SEIU" among the group of organizations participating in the Victory 2004 Florida Coordinated Campaign, although "Florida SEIU" is not listed as a respondent on Attachment B. There is no entity known as "Florida Service Employees International Union" or "Florida SEIU". An intermediate body known as the SEIU Florida State Council is made up of six local unions operating in Florida who are affiliated with SEIU. The State Council is not named in the complaint. Moreover, to the extent that the complaint's

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reference to "Florida Service Employees International Union" or Florida SEIU" might be construed as a reference to the State Council, that body is an independent entity, with its own bylaws and officers, and it cannot be served by notice to the International union.

3. The unsigned Signature Page for the document entitled "Florida Victory 2004" which is attached to the complaint includes "Monica Russo, Florida SEIU." Ms. Russo is an officer of SEIU Local 1199FLORIDA, an affiliated local union of SEIU. There is no allegation in the complaint that SEIU Local 1199FLORIDA engaged in any unlawful activity under the Federal Election Campaign Act, and the local has not been served with the complaint in any event.

4. If called upon to respond, Ms. Russo would testify that she had no role whatsoever in the development or drafting of the document entitled "Florida Victory 2004"; that while she received an electronic copy of the document dated September 1, 2004 (not September 3, 2004 as in the attachment to the complaint), she did not sign that document or otherwise respond to it and did not distribute it to others. Ms. Russo would also testify that neither she nor, to the best of her knowledge, anyone associated with SEIU Local 1199FLORIDA or the Florida State Council, participated in a "Coordinated Campaign Decision Making Table" or in meetings of such a table, as described on page 1 of "Florida Victory 2004". Finally, she would testify that the information contained in "Florida Victory 2004" concerning the plans for the coordinated campaign played no role in the political campaign activities undertaken by SEIU Local 1199FLORIDA during 2004.

5. The gravamen of the complaint insofar as it involves nonparty entities is that they unlawfully coordinated their public activities in connection with the 2004 federal election with federal candidates and the Florida Democratic Party. Under 11 C.F.R. §109.21, a public communication will be found to be coordinated with a candidate or political party only if it satisfies *both* a content standard and a conduct standard. In the Explanation and Justification for its coordination regulations, the Commission stated that the purpose of the content standard is to serve "as a 'filter' or a 'threshold' that screens out [sic] certain communications from even being subjected to analysis under the conduct standards." See Final Rules, "Coordinated and Independent Expenditures," 68 Fed. Reg. 421, 430 (Jan. 3, 2003). The screening function of the content standard is critical because of the highly intrusive nature of investigations into alleged coordination between outside groups and political parties or candidates and is particularly important with respect to complaints filed by partisans against their political opponents, as is the case here. See, e.g., *AFL-CIO v. FEC*, 333 F.3d 168 (D.C.Cir. 2003); *FEC v. Christian Coalition*, 52 F.Supp. 2d 45, 88 (D.D.C. 1999).

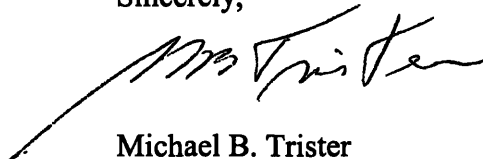
The Commission cannot perform its screening function in this case because the complaint does not allege a single public communication or activity by any SEIU entity which is alleged to have been coordinated with any federal candidate or political party committee. While the unsigned document entitled "Florida Victory 2004" describes a variety of hypothetical grassroots political campaign activities, the document does not remotely suggest that the entities named in the document would be involved in carrying out those activities. It is impossible therefore for the Commission to conclude that there is reason to believe that SEIU or any other entity affiliated with SEIU violated the Federal Election Campaign Act as alleged in the complaint, and it should

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be dismissed without further action.

6. The complaint also fails to allege any facts that even suggest a violation of the conduct standard for coordination by any SEIU entity. In MUR 4291 (2000), the Commission considered whether a union had coordinated its public communications during the 1996 election cycle with the Democratic Party through the union's participation in the coordinated campaign. The General Counsel's final report, which was based on extensive discovery and was accepted by the Commission, found that the state coordinated campaign plans made available to the union contained a great deal of information about the plans, projects, and needs of the party in each individual state, but this evidence was insufficient to establish a case of improper coordination because the plans did not make any reference to, much less request or suggest, any specific public communications by the union. *See*, MUR 4291, General Counsel's Report (June 9, 2000), 16-20. Similarly, "Florida Victory 2004" describes at most certain activities which the Florida Democratic Party intended to undertake and seeks financial and volunteer support from outside entities for those activities. The document contains no "request or suggestion" that the non-party entities to which it was sent conduct any activities of their own. *See* 11 C.F.R. § 109.21(d)(1). Furthermore, because the document does not even mention specific public communications or activities to be conducted by any outside group, it cannot amount to "material involvement" in any activities subsequently undertaken by the groups which received the document, *see id.* § 109.2(d)(2), nor can it amount to "substantial discussion," *see id.* § 109.21(d)(3), with those groups within the meaning of the applicable rule. Finally, as noted earlier, Ms. Russo, who received "Florida Victory 2004" and never signed it, would testify that it played no part in the planning or design of any of her union's political activities during 2004.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Trister", with a long, sweeping horizontal line extending to the left.

Michael B. Trister

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